

33356-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

---

IN RE THE GUARDIANSHIPS OF:

JUDITH DIANE HOLCOMB, ET AL.

---

APPEALS FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

---

**BRIEF OF AMICUS CURIAE SPOKANE COUNTY  
GUARDIANSHIP MONITORING PROGRAM,  
SPOKANE COUNTY SUPERIOR COURT ADMINISTRATOR**

---

LAWRENCE H. HASKELL  
Prosecuting Attorney

Steven J. Kinn  
Deputy Prosecuting Attorney  
Spokane County Prosecuting Attorney's  
Office – Civil Division  
1115 West Broadway, 2<sup>nd</sup> Floor  
Spokane, Washington 99260  
(509) 477-5764  
[SKinn@spokanecounty.org](mailto:SKinn@spokanecounty.org)  
Attorneys for Amicus Curiae

## INDEX

<b>I. ISSUES PRESENTED .....</b>	<b>1</b>
<b>II. STATEMENT OF THE CASE .....</b>	<b>1</b>
A. APPELLATE PROCEDURAL HISTORY .....	1
B. SUBSTANTIVE FACTS AND SUPERIOR COURT PROCEDURAL HISTORY .....	5
<b>III. ARGUMENT .....</b>	<b>10</b>
A. INTRODUCTION .....	10
B. APPELLANT’S BURDEN AND STANDARD OF APPELLATE REVIEW .....	11
C. THE SUPERIOR COURT HAD THE AUTHORITY TO ASSESS HALLMARK GUARDIANSHIP FEES UNDER RCW 11.88.090(10).....	12
D. HALLMARK WAS ACCORDED DUE PROCESS .....	15
E. APPELLANT’S SECOND BRIEF SHOULD BE STRICKEN AND SANCTIONS CONSIDERED UNDER RAP 10.7.....	19
<b>IV. CONCLUSION .....</b>	<b>23</b>

## **TABLE OF AUTHORITIES**

### **WASHINGTON CASES**

<i>Fisher Properties, Inc. v. Arden-Mayfair, Inc.</i> , 115 Wn.2d 364, 798 P.2d 799 (1990).....	11
<i>Gibson v. City of Auburn</i> , 50 Wn. App. 661, 748 P.2d 673, review denied 110 Wn.2d 1028 (1988).....	16
<i>Hurlbert v. Gordon</i> , 64 Wn. App. 386, 824 P.2d 1238 (1992).....	21
<i>In re Disiplinary Proceeding Against Petersen</i> , 180 Wn.2d 768, 329 P.3d 853 (2014).....	5
<i>In re Guardianship of Cornelius</i> , 181 Wn. App. 513, 326 P.3d 718 (2014).....	11
<i>In re M.K.M.R.</i> , 148 Wn. App. 383, 199 P.3d 1038 (2009).....	23
<i>Litho Color, Inc. v. Pac. Employers Ins. Co.</i> , 98 Wn. App. 286, 991 P.2d 638 (1999).....	23
<i>Matter of Guardianship of Fowler</i> , 198 Wn. App. 1023, 2017 WL 1101283 (unpublished).....	16, 18
<i>Morrison v. State Dep't of Labor &amp; Indus.</i> , 168 Wn. App. 269, 277 P.3d 675 (2012).....	16
<i>Scheib v. Crosby</i> , 160 Wn. App. 345, 249 P.3d 184 (2011).....	18

### **FEDERAL CASES**

<i>Cleveland Board of Educ. v. Loudermill</i> , 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).....	17
---	----

### **STATUTES**

RCW 11.88.090 .....	passim
RCW 11.96A.020.....	12

## **RULES AND REGULATIONS**

APR 19.....	20
CR 26 .....	18
CR 54 .....	18
CR 81 .....	18
GR 14.1 .....	16
GR 23 .....	13
RAP 10.3.....	11, 21
RAP 10.7.....	11, 21, 22, 23
RAP 17.7.....	3

## **I. ISSUES PRESENTED**

1. Has Appellant established that the Superior Court abused its discretion in each of the 121 consolidated appeals where, pursuant to RCW 11.88.090(10), it ordered the imposition of Guardian Ad Litem (“GAL”) fees on Appellant where those fees were generated in the Guardianship review hearings necessitated by Appellant Lori Petersen’s suspension as a Certified Professional Guardian (“CPG”)?

2. Was Appellant given notice and an opportunity to respond as part of the process resulting in the Court’s orders assessing it GAL fees?

3. Should this Court, pursuant to RAP 10.7, strike Appellant’s Second Brief and or impose sanctions for Appellant’s refusal to comply with this Court’s orders and the Rules of Appellate Procedure regarding the submission of a proper brief?

## **II. STATEMENT OF THE CASE**

### **A. Appellate Procedural History**<sup>1</sup>

Lori Petersen; Hallmark Care Services, Inc. dba Castlemark Guardianship and Trusts; and Hallmark Care services, Inc. dba Eagle

---

<sup>1</sup> Given the various types of transcripts submitted in this case, I will designate the transcripts cited in my brief as follows: the transcript consisting of 86 pages and commencing with the Gehring Guardianship hearing will be referred to as “TRA.” The three transcripts consisting of 462 consecutive pages commencing with the Bowers Guardianship will be referred to as “TRB.”

Guardianship and Professional Services (collectively “Hallmark”) were removed as guardians in over 100 Guardianships following Hallmark’s owner Lori Petersen’s suspension as a CPG.<sup>2</sup>

Hallmark appealed three separate orders in over 100 separate Guardianships. First, Hallmark appealed the order appointing a special master to appoint GALs and schedule review hearings in all of Hallmark/Petersen’s Guardianships. Secondly, Hallmark appealed its removal in the Guardianships and the failure of the Court to replace Guardianships where Petersen was a guardian or standby guardian with Hallmark. Finally, Hallmark appealed the Court’s orders in 121 Guardianships assessing Hallmark with the GAL fees generated in the review process.<sup>3</sup>

---

<sup>2</sup> Throughout the suspension and removal process Hallmark attempted to assert that somehow that Hallmark business was separate and independent from the control of Lori Petersen. That Hallmark and its associated agencies were all owned and controlled by Lori Petersen is best evidenced by Ms. Petersen’s attempts to avoid Hallmark’s removal as guardians by granting *revocable* proxies controlling Hallmark to others in the immediate wake of her suspension. *See* CP 109.

<sup>3</sup> A fourth set of appeals were filed by Hallmark of the Superior Court’s orders finding Hallmark in contempt for refusing to conduct and file final estate accountings as part of their removal as guardians. The briefing and argument of those appeals have been stayed pending resolution of the current set of appeals.

This Court ordered briefing and scheduled argument of a variety of procedural issues that arose from Hallmark's numerous appeals, principally, to address Hallmark's failure to serve the Guardianships as parties to the appeal, the Spokane County Guardianship Monitoring Program's motion to be granted special amicus status as well as the Court's order directing briefing on the issue of Hallmark's standing to appeal its own removal as Guardians.

Court of Appeals Commissioner Monica Wasson's August 26, 2015 Ruling addressed the multiple issues concerning the appeals and ordered in conclusion:

... appeal of the Orders removing guardian and appointing a special master are dismissed because Hallmark is not an aggrieved party as to those Orders. The appeal of the Order that assessed fees is appealable by Hallmark, and the Clerk of Court shall set a perfection schedule in that matter. The motion to add amicus is granted. The motion to dismiss Hallmark and Ms. Petersen is granted as to their appeals of the Orders this Court has dismissed. Hallmark shall serve the appointed guardians with its notice of appeal of the Order that assessed its fees, in the manner directed in this ruling.

Commissioner's August 26, 2015 Ruling at 22-23.

Hallmark did not move to modify Commissioner Wasson's Ruling as required by RAP 17.7.

Hallmark filed its opening brief on December 2, 2016.

Amicus moved to strike Hallmark's brief in its entirety based upon (1) Hallmark's addressing its brief almost entirely to the two issues the Court had previously ruled Hallmark lacked standing to appeal; (2) Hallmark's asserting error on behalf of entities and individuals not parties to the appeal and (3) Hallmark's wholesale failure to properly reference the record.

After further briefing, argument and review of Appellant's Opening Brief, Commissioner Wasson issued a ruling on January 23, 2017. In her ruling, she noted that she had reviewed Appellant's brief and had only found approximately three pages out of the approximately fifty page brief relevant to what Commissioner Wasson had held as appealable as a matter of right. Commissioner's January 23, 2017 Ruling at 22.

In conclusion Commissioner Wasson ordered:

... the amicus's motion to strike Hallmark's opening brief is granted. Within 10 days of this ruling, Hallmark shall file an opening brief that conforms to the August 26, 2015 ruling, quoted above. Hallmark shall edit, as well, the "Facts and Statement of the Case" section of its brief so as to exclude reference to facts not relevant to its third assignment of error. Finally, the brief shall adhere to all other rules of appellate procedure, and, specifically, to RAP 10.3 and 10.4, which require a specific citation to the record for all factual statements.

Commissioner's January 23, 2017 Ruling at 22-23.



Hallmark's motion to modify Commissioner Wasson's Ruling striking its brief was denied by this Court on April 10, 2017.

Hallmark sought discretionary review of the Court of Appeals order denying its motion to modify Commissioner Wasson's order striking its opening brief.

The Supreme Court denied Hallmark's motion for discretionary review on June 22, 2017.

Hallmark filed a second opening brief on August 4, 2017.

**B. Substantive Facts and Superior Court Procedural History**

The pertinent facts of this appeal arose as a result of the suspension of Lori Petersen as a Certified Public Guardian. *See In re Disciplinary Proceeding Against Petersen*, 180 Wn.2d 768, 329 P.3d 853 (2014).

The decision of the Certified Professional Guardian Board suspending Lori Petersen's license to act as a CPG was initially affirmed by the Washington State Supreme Court on March 15, 2015. CP 1880-81. In anticipation of the effective date of the suspension, the Superior Court ordered the appointment of a special master to facilitate the expedited appointment of GALs to review and to report to the Court in the 124 Guardianships in Spokane County where Ms. Petersen was appointed as a guardian, standby guardian or had an ownership interest in a guardianship

agency. CP 94-95. Hallmark was provided with the Order Appointing Special Master. CP 5-11.

Consistent with the Order Appointing a Special Master, orders were issued appointing GALs and scheduling review hearings for each Guardianship. The orders appointing GALs were provided to Hallmark in advance of the scheduled hearings. CP 18-24.<sup>4</sup>

Each order appointing a GAL contained the following language:

... Upon the hearing to appoint a successor guardian and/or standby guardian, the Court may assess all Guardian ad Litem fees as costs against Certified Professional Guardian Lori Petersen, CPG # 9713.

Order Appointing Guardian Ad Litem in *Judith Holcomb Guardianship*, Case No. 4-10419-1, CP 14-16.<sup>5</sup>

---

<sup>4</sup> Each order appointing GAL found good cause to shorten the period for filing the GAL reports prior to the commencement of the scheduled hearings from fifteen to five days pursuant to RCW 11.88.090(ix) given the fact that the GALs were all appointed on April 10, 2015 and Ms. Petersen's suspension was to commence on April 27, 2015. *See* CP 69, 543, 403, 376, 482, 643, 503, 650, 498, 341, 245, 241, 516, 494, 214, 273, 306, 413, 507, 451, 520, 670, 661, 702, 285, 611, 539, 558, 494, 431, 955, 229, 619, 1034, 194, 443, 364, 536, 391, 329, 233, 478, 253, 486, 333, 198, 399, 450, 603, 583, 562, 317, 321, 395, 180, 474, 249, 595, 615, 295, 407, 573, 352, 380, 587, 184, 313, 206, 373, 187, 420, 427, 463, 658, 647, 349, 466, 696, 309, 210, 325, 360, 623, 225, 291, 532, 221, 554, 512, 217, 639, 356, 424, 388, 416, 576, 269, 257, 303, 202, 565, 191, 579, 631, 607, 470, 455, 546, 2832

<sup>5</sup> For referencing the portions of the orders where Hallmark was given notice of the probability of being assessed GAL fees in all of the orders appointing GALs. *See* CP 568, 542, 402, 375, 481, 642, 501, 649, 497, 340, 244, 240, 515, 493, 213, 272, 305, 412, 505, 450, 519, 669, 661, 701, 702, 284, 610, 538, 557, 493, 430, 954, 228, 618, 1032, 193, 442, 363, 535, 390, 328, 232, 477, 252, 485, 332, 197, 398, 449, 602, 582, 561, 316, 320, 394, 179, 473, 248, 594, 614, 294, 406, 572, 351, 379, 586, 183, 312, 205, 37,

The orders appointing GALs also ordered that the GAL fees not exceed five hundred dollars (\$500) without further authorization of the Court. *See* Clerk's Papers referenced in footnote 4 of this brief.

The GALs had filed their requests for GAL fees and supporting documentation by the time of the scheduled review hearings.<sup>6</sup>

Review hearings were then held in all of the Guardianships between May 4 and June 4, 2015. Hallmark's Attorney was present at all of the hearings.

Although Hallmark's attorney objected, for the most part, in the hearings to its removal as guardians at various points, he never objected to the amount or accuracy of the GAL fees requested at the hearings.

At the conclusion of the hearings the Court indicated it was reserving the issue of reimbursement of GAL fees pending further Court

---

186, 419, 426, 462, 657, 646, 348, 465, 695, 308, 209, 324, 359, 622, 224, 290, 531, 220, 553, 511, 216, 638, 355, 423, 387, 1234, 415, 575, 268, 256, 302, 201, 564, 190, 578, 630, 606, 469, 454, 545, 2831.

<sup>6</sup> See for example CP 984 (\$500), 932 (\$500), 1472 (\$288), 940 (\$500), 1342, 1337 (\$288), 900 (\$500), 1371 (\$288), 1002 (\$500), 993 (\$500), 1521 (\$1,272), 964 (\$920).

review. *See* Holcomb, “Addendum to Order Appointing Successor Guardian,” CP 140.<sup>7</sup>

On June 9, 2015, the Superior Court issued and served judgments assessing the GAL fees ordered by the Court against Hallmark in all of the Guardianships where it had been removed as guardian. *See* Holcomb, “Judgment Summary,” CP 173- 174<sup>8</sup> and CP 168-172. On the first page of each of the two-page judgments the Court found, “[t]he GAL investigation

---

<sup>7</sup> See for example CP 2842, 3173, 2767, 2792, 1479, 2590, 1307, 1364, 1586, 1726, 2498, 2611, 1249, 2834; TRB 329, 321, 294, 274, 264, 365, 349, 372, 299, 279, 356, 312, 309, 287, 283, 325, 339, 302

<sup>8</sup> *See also* CP 3315-3316, 3303-3304, 3379-3380, 3385-3386, 3277-3278, 3345-3346, 3289-3290, 3189-3190, 3397-3398, 3227-3228, 3207-3208, 3193-3194, 3291-3292, 3181-3182, 3363-3364, 3219-3220, 3255-3256, 4361-4362, 3387-3388, 3295-3296, 3307-3308, 3267-3268, 3391-3392, 3199-3200, 3331-3332, 3311-3312, 3401-3402, 3285-3286, 3271-3272, 3233-3234, 3359-3360, 3335-3336, 3337-3338, 3353-3354, 3273-3274, 3253-3254, 3299-3300, 3377-3378, 3231-3232, 3195-3196, 3283-3284, 3203-3204, 3395-3396, 3367-3368, 3355-3356, 3261-3262, 3399-3400, 3329-3300, 3403-3404, 3313-3314, 3221-3222, 3235-3236, 3247-4248, 3349-3350, 3393-3394, 3205-3206, 3325-3326, 3409-3410, 3211-3212, 3251-3252, 3323-3324, 3373-3374, 3241-3242, 3405-3406, 3177-3178, 3215-3216, 3185-3186, 3259-3260, 3234-3246, 3265-3266, 4357-4358, 3269-3270, 3237-3238, 3347-3348, 3239-3240, 3275-3276, 3361-3362, 3369-3370, 3183-3184, 3243-3244, 3375-3376, 3333-3334, 3279-3280, 3191-3192, 3365-3366, 3301-3302, 3187-3188, 3305-3306, 3297-3298, 3357-3358, 3343-3344, 3371-3372, 4359-4360, 3249-3250, 3383-3384, 3317-3318, 3197-3198, 3201-3202, 3217-3218, 3179-3180, 3319-3320, 3175-3176, 3321-3322, 3339-3340; 4363-4364, 3389-3390, 3263-3264, 3309-3310, 3381-3382, 3341-3342, 3327-3328, 3407-3408, 3229-3230, 3293-3294, 3223-3224, 3257-3258, 3209-3210, 3287-3288, 3225-3226, 3213-3214, and 3351-3352.

was necessitated by the suspension of Lori Petersen as a CPG in this matter and her association with related agencies.” On the second page of each judgment the Court enunciated these additional findings:

That although the agency in this case is not one in which Lori Peterson is the designated CPG, it has failed to disclose the interest that Ms. Peterson has in the agency and the degree of control that she has over the agency despite the requests of the court. Ms. Peterson has also served as the designated CPG for this agency and her activities were not overseen by the agency appropriately and as a result she was suspended. Furthermore, the agency has been in chaos with rapidly changing CPG designations. There have been numerous complaints from IPs, caregivers and others about lack of contact, lack of response to concerns raised about care and in some cases complaints about financial improprieties. The court has seen many instances of inaccurate and outdated information provided to it in annual reports. These acts and/or omissions have resulted in breaches of the fiduciary duty that the guardian owes to its IPs. Effective May 18, 2015, the agency, because of the recent resignation of one of the designated CPGs will not have the requisite two CPGs to conduct business and effective June 30, 2015, the resignation of the other CPG will mean that it will have no CPGs to conduct business and thus it does not appear that the agency can provide the assurance of viability beyond that date. For all these reasons, and based upon additional findings of the court as articulated on the record in these related proceedings and incorporated by reference herein, the CPG agency is presently unsuitable to be appointed as a successor guardian and that has necessitated the need of the court to appoint a GAL to investigate and recommend a successor guardian to insure continuity of care for the incapacitated persons under its jurisdiction.

Holcomb Judgment, CP 174.

On June 16, 2015, Hallmark appealed all of the Superior Court's judgments assessing its GAL fees.

Hallmark never requested an evidentiary hearing for any of the Guardianship hearings that resulted in the judgments. Hallmark never questioned the accuracy of the GAL billings for fees. Hallmark never objected at any point to the Court authorizing the payment of GAL fees in any of the review hearings. Finally, Hallmark never sought reconsideration of the judgments prior to filing its appeals.

### **III. ARGUMENT**

#### **A. Introduction**

As noted in the "Appellate Procedural History" of this brief, Hallmark's first opening brief was stricken and its counsel ordered to prepare a brief that addressed only the issue of the Superior Court's issuance of judgments assessing its GAL fees incurred in the review process resulting in Hallmark's removal and to otherwise conform his advocacy to the Rules of Appellate Procedure.

Hallmark has elected instead to ignore this Court's Order and instead filed a second brief which substantially consists of the same prohibited content found in the stricken brief.

In light of the Court's order, Amicus will only address the issue of the Superior Court's Judgments assessing GAL fees and further discuss further sanctions for improper briefing pursuant to RAP 10.7.

**B. Appellant's Burden and Standard of Appellate Review**

Appellant makes vague and generic arguments in support of his position that the Court's assessment of GAL fees against Hallmark in all of the 121 Guardianship cases appealed were in error. Hallmark does not reference each judgment in its brief or allege error in the findings of the Court in each judgment.

In so failing to accurately allege error in each of the individual judgments supported by the record, Appellant fails to meet its burden of establishing error in the Superior Court's Judgments. *See* RAP 10.3(a)(4)(6); *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990) ("There is a presumption in favor of the trial court's findings, and Arden, the party claiming error, has the burden of showing that a finding of fact is not supported by the record").

In guardianships, the management of a guardianship is reviewed for abuse of discretion. *In re Guardianship of Cornelius*, 181 Wn. App. 513, 528, 326 P.3d 718 (2014). A court, for good reason, may modify or terminate a guardianship and grant relief "as it deems just and in the best interest of the incapacitated person." In managing guardianship estates, the

courts have been granted “full and ample power and authority ... to administer and settle ... [a]ll matters concerning the estates and assets of incapacitated ... persons.” RCW 11.96A.020(1)(a). The Superior Court has “full power and authority to proceed ... in any manner and way that the court deems right and proper.” RCW 11.96A.020(2). This “power and authority” includes appointing GALs to represent the interests of the incapacitated person. RCW 11.88.090(1).

In all of the Guardianships before this Court, the Superior Court was confronted with the reality of Lori Petersen’s suspension and the resulting emergent necessity to review all of her Guardianships as well as the Guardianship Agencies she controlled in Spokane County. In appointing a special master to in turn schedule review hearings and order the assistance of GALs, the Court had the “full power and authority” to “proceed in any manner and way that to the court seems right and proper.” RCW 11.96A.020(2)

**C. The Superior Court Had the Authority to Assess Hallmark Guardianship Fees Under RCW 11.88.090(10)**

Appellant asserts that “[t]here is nothing in RCW 11.88 et al that allows to [sic]the court to levy sanctions against a guardian for fees and costs associated with the removal of the guardian.” Appellant’s Second



Brief at 37-38. In so doing Hallmark ignores RCW 11.88.090(10) which states:

The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, *That the court may charge such fee to the petitioner, the alleged incapacitated person, or any. person who has appeared in the action; or may allocate the fee, as it deems just.*

RCW 11.88.090(10) (emphasis added).<sup>9</sup>

In addition to the reality that the cost of appointing the GALs for each hearing was necessitated by the urgent need to find replacement guardians in well over 100 Guardianships in the wake of Lori Petersen's suspension, the actual GAL investigations revealed massive mismanagement and misconduct in Hallmark's administration of its Guardianships.

---

<sup>9</sup> Hallmark also argues that the General Rules and Disciplinary Rules governing the conduct of Professional Certified Guardians supersedes the authority of the Superior Court in it's brief at pages 37-40. In so doing Hallmark ignores the preamble to the Disciplinary Regulations for Certified Professional Guardians, "*This rule does not duplicate the statutory process by which the courts supervise guardians nor is it a mechanism to appeal a court decision regarding the appointment or conduct of a guardian.*" GR 23(a) attached to Appellant's Second Brief at 53 (emphasis added).

The Court incorporated its findings of Hallmark's administrative incompetence in each of the judgments it ordered assessing fees. *See* Holcomb "Judgment Summary," CP 173.<sup>10</sup>

The Court's findings were also announced in general terms throughout the course of the review hearings in response to Hallmark's generic objections. *See*, for example, TRA 9-10, 24-26, 70-72; TRB 79-80, 266- 268

The record itself demonstrates massive instances of Hallmark's mismanagement and misconduct of its duty as a guardian in terms of mismanagement of trust funds,<sup>11</sup> charging excessive and or improper Guardianship fees,<sup>12</sup> providing insufficient or withholding entirely the incapacitated person's personal allowance,<sup>13</sup> failure to perform visits of the incapacitated person,<sup>14</sup> failure to file periodic care plans or status reports,<sup>15</sup> falsified reports evidenced by a review of guardian reports by the Court

---

<sup>10</sup> *See also* Clerk's Papers listed in footnote 8 of this brief

<sup>11</sup> CP 1155-1156, 1271, 1278, 2737-2738, 2252-2253, 1150, 2718, 2719; TRB 150, 342, 182, 391-392, 369, 297, 23, 307, 308, 162, 333-337, 109-110, 460.

<sup>12</sup> CP 1155-1156; TRB 342, 460.

<sup>13</sup> CP 2243, 3065, 2423, 1278, 817, 363, 364-365, 2252-2253, 1206, 2468, 1178, 1345, 2718; TRB 293, 294, 343, 369, 372, 353, 355.

<sup>14</sup> CP 3053, 2572, 1206; TRB 369, 354, 355, 286, 20.

<sup>15</sup> CP 2492, 2231; TRB 321, 46; TRA 14-15.

appearing nearly identical from previous reports in content or reporting visitations at addresses the incapacitated person had not resided at for years,<sup>16</sup> no current address for the incapacitated person in the Guardianship file,<sup>17</sup> improper care,<sup>18</sup> complaints from caregivers concerning lack of communication by the guardian,<sup>19</sup> and documentation from the GAL that Petersen was an improper fiduciary in that she had declared bankruptcy in the past.<sup>20</sup>

A review of the record reveals that the Superior Court assessed Hallmark the GAL fees as it “deemed just”. RCW 11.88.090(10). There was no abuse of discretion.

#### **D. Hallmark Was Accorded Due Process**

Hallmark alleges that the Court denied it due process in issuing the judgments assessing GAL fees.

Hallmark refers to the Court’s review hearings as a “drumhead trial” and further that “[n]one of these cases and complaints alleged by the Court were ever adjudicated by the Court, nor the CPG Board.” In so doing, he

---

<sup>16</sup> TRB 321, 343, 273-274, 364-365, 348-349, 241, 355, 286, 324.

<sup>17</sup> CP 3173, 861, 1479; TRB 104, 43, 147, 285-286.

<sup>18</sup> TRB 360-361, 364-365, 348-349, 299, 454.

<sup>19</sup> CP 2252-2253; TRB 166, 159, 369, 372, 277.

<sup>20</sup> CP 2744-2746, 2627-2628; TRB 393.

ignores the fact that no statute or court rule requires a formal evidentiary hearing in a guardianship proceeding. *See Matter of Guardianship of Fowler*, 198 Wn. App. 1023, 2017 WL 1101283.<sup>21</sup> Citing *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), *Fowler* correctly notes that, “due process is a flexible concept that does not demand a strict set of procedures in every situation.” *Fowler*, 2017 WL 1101283 at \*2. Rather, due process requires notice and a meaningful opportunity to be heard. *Morrison v. State Dep’t of Labor & Indus.*, 168 Wn. App. 269, 273, 277 P.3d 675 (2012).

RCW 11.88.090(10) permits the Superior Court the discretion to assess GAL fees in a Guardianship proceeding amongst any of the parties or persons appearing in the action “as it deems just.” Nothing in RCW 11.88.090(10) requires a contested evidentiary hearing and certainly Hallmark never demanded an evidentiary hearing. Indeed, due process does not necessarily require a full evidentiary hearing. *Gibson v. City of Auburn*, 50 Wn. App. 661, 665, 748 P.2d 673, *review denied* 110 Wn.2d 1028

---

<sup>21</sup> *See* GR 14.1, citation to unpublished opinions is permitted if the opinion was filed after March 1, 2013. Such citations are non-binding but may be accorded such persuasive value as the court deems appropriate.

(1988), (due process does not require full evidentiary hearing in *Loudermill*<sup>22</sup> pre-termination hearing).

In each of the review hearings, Hallmark was provided notice in advance of the hearings in the orders appointing the GALs that the issue of assessing Lori Petersen with the costs of the GAL investigations was an issue to be addressed at the hearings. *See* CP 18-24 and footnote 4 of this brief. The orders indicated that the Court was approving initially up to \$500 in GAL fees. CP 18-24 and footnote 4 of this brief. Hallmark appeared at all of the hearings. Although Hallmark objected to being removed as guardian in most of the hearings, it never contested the amount of fees requested by the GALs.<sup>23</sup> Even in this appeal, Hallmark asserts no error in the Court's calculation of GAL fees assessed against it. Of course, the fact that Hallmark never sought reconsideration of the judgments reinforces the

---

<sup>22</sup> *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

<sup>23</sup> The trial court denied Hallmark's motion to consolidate the review hearings early in the review process, except for purposes of hearing its objections to the appointment of a special master. *See* transcript of Court's May18, 2015 Decision at 4 attached to Appellant's Second Brief. The removal issues and the GAL fees were addressed in separate hearings. Hallmark's attorney's objection to Hallmark or Pedersen's removal and or denial of Hallmark's request to be substituted for Pedersen, mostly consisted of his adopting the arguments he tendered in a separate case. *See, e.g.*, TRB 53, 79, 147. Hallmark's attorney, however, utterly failed to tender an objection in a number of cases. *See, e.g.*, TRB 160-163, 179-181, 208-212, 223-225.

fact that there was no genuine issue as to the Court's assessment of fees under RCW 11.88.090(10).

Appellant also argues that the Court violated the Superior Court Civil Rules by failing to provide discovery under CR 26,<sup>24</sup> and failing to prepare the judgments in Court or note the judgments separately for presentments under CR 54.

There was no requirement for compliance with the Civil Rules since the Court was following the distinct procedures mandated under Chapter 11.88 RCW and otherwise accorded Hallmark due process in terms of notice and a reasonable opportunity to be heard. As such, Chapter 11.88 RCW is a special proceeding exempt from the application of the Civil Rules. CR 81(a); *Scheib v. Crosby*, 160 Wn. App. 345, 351-352; 249 P.3d 184 (2011); *see also, Fowler*, 2017 WL 1101283 (no abuse of discretion in trial court not following summary judgment requirements of CR 56(c) in guardianship proceeding).<sup>25</sup>

Guardianship Review Hearings are special proceedings and exempt from the application of the Civil Rules under CR 81.

---

<sup>24</sup> Even assuming the Civil Rules apply in a Guardianship Review Hearing, Hallmark never requested any discovery under the methods listed in CR 26 nor did it request additional time to obtain discovery under the Civil Rules. *See* CR 26.

<sup>25</sup> See footnote 20 of this brief.

**E. Appellant's Second Brief Should Be Stricken and Sanctions Considered Under RAP 10.7**

As previously noted in the “Appellate Procedural History” of this brief, this Court previously struck Hallmark’s first brief and ordered it not to argue issues it had no standing to appeal and to edit those portions of his “Statements of Fact” not relevant to its third assignment of error, i.e. Hallmark’s removal by the Court as guardian. *See* Commissioner Wasson’s January 23, 2017 order at 22-23.<sup>26</sup> Excluding attachments, Hallmark’s second opening brief is fifty pages.

The “Statement of Facts” in Hallmark’s Second Brief is found at pages 10-26. The only facts pertaining to the Superior Court’s assessment of GAL fees can be found briefly at pages 22-23. At the conclusion of the “Statement of Facts,” Hallmark, in addition to requesting that all of the Judgments be overturned, additionally petitions this Court to “reverse all rulings of the Spokane County Superior Court Order Appointing Special Master.” Appellant’s Second Brief at 26. In other words, Hallmark

---

<sup>26</sup> Appellant attempts to shoehorn in his previous arguments alleging error in removing it as guardians by now arguing that the alleged improper process removing Hallmark as guardians constitutes grounds for reversing the judgments. Since a guardian is never an aggrieved party with standing to appeal their own removal, the fact that a guardian has been removed cannot form the basis for alleging error in the Court’s assessment of GAL fees.

continues in its second brief to argue facts and request relief pertaining to its removal as Guardians.

Hallmark's "Argument" portion of the brief can be found at pages 26-47. His argument regarding the imposition by the Superior Court imposing fees can be found briefly at pages 37-38 and later at pages 41-46.<sup>27</sup>

The brief at times continues to improperly cite the record, for example, a few pages of a several hundred-page record to support what transpired in all of the hearings or citation to the entire record,<sup>28</sup> and assertions of facts not supported by the record.<sup>29</sup>

---

<sup>27</sup> Even pages 41-46 consist at times of argument concerning imposition of fees that are tangential to Hallmark's allegations of being improperly removed as guardians.

<sup>28</sup> "...the Court, through its Commissioners, commenced the groups of hearings, each in half hour time slots, in which the appellants were summarily removed as the guardians of record, absent any proof of wrongdoing, *for all 124 IPs assigned to Lori Petersen d.b.a. Empire and Hallmark Care Services under its two agency certifications. RP 2/04/16, 6-10*" Appellant's Second Brief at 16-17 (emphasis added).

"Counsel for Appellants restated these objections for the record at the *beginning of each group of hearings for all 124 proceedings. See RP in general.*" Appellant's Second Brief at 20.

<sup>29</sup> "Counsel for Appellants also spoke with the WSBA hotline regarding this issue. The ethics hotline consultant was unable to provide any guidance as this issue had never been brought up before." Appellant's Second Brief at 18 n. 7, *See also* Appellant's Second Brief at 19 nn. 8-9. In addition to being outside of the appellate record, counsel's reference to contacting the WASBA hotline is, itself, improper. Cf. APR 19(e)(5) ("No information relating to an ethics inquiry, including the fact that an inquiry has been



In *Hurlbert v. Gordon*, 64 Wn. App. 386, 824 P.2d 1238 (1992), Division I was confronted with an appeal consisting of thousands of pages of clerk's papers and a similarly voluminous record of proceedings. *Id.* at 400. In taking the unusual step of imposing sanctions against the Appellant for inadequate briefing, the Court initially noted the fundamental purpose of RAP 10.3:

RAP 10.3(a)(4), (5) and RAP 10.3(b) require that reference to the relevant parts of the record must be included for each factual statement contained in the sections of the parties' briefs devoted to the statement of the case and to argument. RAP 10.4(f) provides that references to the record should designate the page and part of the record which supports each factual statement contained in the statement of the case and in the argument.

...

The purpose of these rules is to enable the court and opposing counsel efficiently and expeditiously to review the accuracy of the factual statements made in the briefs and efficiently and expeditiously to review the relevant legal authority.

*Hurlbert*, 64 Wn. App. at 399-400.

RAP 10.7 provides:

If a party submits a brief that fails to comply with the requirements of Title 10, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief

---

made, its content, or the response thereto, may be asserted in response to any grievance or complaint under the applicable disciplinary rules, nor is such information admissible in any proceeding under the applicable disciplinary rules").

returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

Hallmark has already been given an opportunity to file a second brief that complies with this Court's order, and in that brief, Hallmark continues to thwart the Rules of Appellate Procedure and this Court's directives. Accordingly, Hallmark's second brief should be stricken.

Hallmark has continually ignored the requirements of RAP 10.7 and the order of this Court to submit an appropriate brief. Indeed, Hallmark's attitude is that it can appeal well over a hundred cases but not be bothered with the minutiae of complying with the Rules of Appellate Procedure and this Courts efforts to provide for an orderly and efficient procedure for addressing the legal issues before it.<sup>30</sup>

RAP 10.7 provides that the Appellate Court will "ordinarily impose sanctions." Sanctions are ordinarily imposed for failure to comply with RAP 10.7 to both the opposing party and the Court of Appeals. Sanctions

---

<sup>30</sup> An example of Hallmark's attitude to properly providing and citing to the record in these appeals can be found at pages 13-15 of his December 29, 2016, response to the motion to strike his first brief. In its response, Hallmark complained that it had been compelled to actually provide a record for all of the hearings and indicated that proper citation to the "voluminous" record as an "excuse" and "distraction." *See* Hallmark's Response to Amicus Motion to Strike Brief at 13-14.

for failure to comply with appellate rules are permissive, not mandatory. *In re M.K.M.R.*, 148 Wn. App. 383, 388 n. 5, 199 P.3d 1038 (2009).

This Court can order sanctions paid directly to the Court.<sup>31</sup> *See Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn. App. 286, 306, 991 P.2d 638 (1999).

Hallmark has yet to file an additional brief on its pending appeals of the Superior Court imposition of contempt sanctions in the same Guardianships at issue in this appeal.

It is perhaps time to fashion an appropriate remedy under RAP 10.7.

#### **IV. CONCLUSION**

Hallmark was served with orders appointing GALs and setting review hearings in each of its Guardianships. The orders contained notice that the Court proposed assessing the GAL fees to Lori Petersen. Hearings were held and Hallmark was given an opportunity to respond to the Court's notice that it would impose fees.

Given the administrative nightmare impacting over a hundred Spokane County Guardianships resulting from Lori Petersen's suspension as a CPG and the subsequent evidence of Hallmark's mismanagement of those Guardianships revealed in the review hearing process, the Court did

---

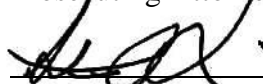
<sup>31</sup> An Amicus cannot be awarded sanctions.

not abuse its discretion in assessing Hallmark the Guardianship fees in 121 Guardianships pursuant to RCW 11.88.090(10).

Given Hallmark's refusal to properly brief the issues before this Court, the Court should consider imposing a remedy to deter future improper briefing.

Dated this 25<sup>th</sup> day of September, 2017.

LAWRENCE H. HASKELL  
Prosecuting Attorney



---

STEVEN J. KINN, WSBA# 12984  
Deputy Prosecuting Attorney  
Attorneys for Amicus Curiae

### **PROOF OF SERVICE**

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 25<sup>th</sup> day of September, 2017, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

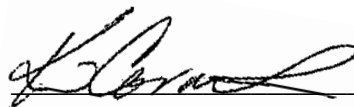
John Pierce, Esq.	<u>    </u>	Personal Service
Law Office of John Pierce, P.S.	<u>  X  </u>	U.S. Mail
505 W. Riverside Avenue, Suite 518	<u>    </u>	Hand-Delivered
Spokane, Washington 99201	<u>  X  </u>	Email
Amanda Witthauer	<u>    </u>	Personal Service
P.O. Box 1625	<u>  X  </u>	U.S. Mail
Veradale, WA 99037	<u>    </u>	Hand-Delivered
Constance O'Hara	<u>    </u>	Personal Service
816 W. Francis Ave., Ste 382	<u>  X  </u>	U.S. Mail
Spokane WA 99205	<u>    </u>	Hand-Delivered
Safe Haven Guardianship Agency	<u>    </u>	Personal Service
921 W. Broadway Ave., Ste 301	<u>  X  </u>	U.S. Mail
Spokane WA 99201	<u>    </u>	Hand-Delivered
David Beseler	<u>    </u>	Personal Service
1312 N Monroe Ste 121	<u>  X  </u>	U.S. Mail
Spokane WA 99201	<u>    </u>	Hand-Delivered
Jana Worthington	<u>    </u>	Personal Service
9119 N. Dusk Court	<u>  X  </u>	U.S. Mail
Spokane WA 99208	<u>    </u>	Hand-Delivered
Lin O'Dell	<u>    </u>	Personal Service
P.O. Box 9898	<u>  X  </u>	U.S. Mail
Spokane WA 99209	<u>    </u>	Hand-Delivered

Peggy Bureta	___	Personal Service
3012 W. Fairview Ave	<u>X</u>	U.S. Mail
Spokane WA 99205	___	Hand-Delivered
Kelly Moore	___	Personal Service
5008 N Lee St	<u>X</u>	U.S. Mail
Spokane, WA 99207	___	Hand-Delivered
Kristi Kilbourne	___	Personal Service
8611 E. Sprague Ave	<u>X</u>	U.S. Mail
Spokane Valley, WA 99212	___	Hand-Delivered
Theodore Skomo	___	Personal Service
1314 S. Grand Ste 2 PMB 278	<u>X</u>	U.S. Mail
Spokane, WA 99202	___	Hand-Delivered
James Spurgetis	___	Personal Service
422 W. Riverside Ave Ste 620	<u>X</u>	U.S. Mail
Spokane WA 99201	___	Hand-Delivered
Winston Cook	___	Personal Service
520 N. Grant Ave	<u>X</u>	U.S. Mail
Medical Lake, WA 99022	___	Hand-Delivered
Anita Byrd	___	Personal Service
P.O. Box 407	<u>X</u>	U.S. Mail
Colfax, WA 99111	___	Hand-Delivered
Janelle Lakman	___	Personal Service
4668 Price Rd.	<u>X</u>	U.S. Mail
Clayton, WA 99110	___	Hand-Delivered
Jody Schierman	___	Personal Service
P.O. Box 11501	<u>X</u>	U.S. Mail
Spokane Valley, WA 99211	___	Hand-Delivered
Betty Brinkerhoff	___	Personal Service
415 N. 3836 E.	<u>X</u>	U.S. Mail
Rigby, ID 83442	___	Hand-Delivered

Janice Burke  
P.O. Box 3384  
Yakima, WA 98903

<input type="checkbox"/>	Personal Service
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand-Delivered

Dated this 25<sup>th</sup> day of September, 2017, in Spokane, Washington.

A handwritten signature in black ink, appearing to read "Janice Burke", written over a horizontal line.

# SPOKANE COUNTY PROSECUTOR

September 25, 2017 - 2:00 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 33356-6  
**Appellate Court Case Title:** In re the Guardianship of: Judith Diane Holcomb  
**Superior Court Case Number:** -4-04191-

### The following documents have been uploaded:

- 333566\_Briefs\_20170925135925D3701268\_0405.pdf  
This File Contains:  
Briefs - Amicus Curiae  
*The Original File Name was Amicus-Brief - 092517.pdf*

### A copy of the uploaded files will be sent to:

- john@lawps.com
- tbaldwin@spokanecounty.org

### Comments:

---

Sender Name: Kim Cornelius - Email: kcornelius@spokanecounty.org

**Filing on Behalf of:** Steven J. Kinn - Email: skinn@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

Address:  
1100 W Mallon Ave  
Spokane, WA, 99260-0270  
Phone: (509) 477-2873

**Note: The Filing Id is 20170925135925D3701268**